

Message Text

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ACTION ARA-20

INFO OCT-01 ISO-00 SSO-00 NSCE-00 USIE-00 INRE-00 CCO-00

AGR-20 CEA-02 CIAE-00 COME-00 DODE-00 EB-11 FRB-02

H-03 INR-10 INT-08 L-03 LAB-06 NSAE-00 NSC-10 PA-04

RSC-01 AID-20 CIEP-02 SS-20 STR-08 TAR-02 TRSE-00

PRS-01 SPC-03 FEA-02 OMB-01 SAM-01 IO-14 DRC-01 /176 W

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O 232025Z FEB 74 ZFF4

FM AMEMBASSY MEXICO

TO SECSTATE WASHDC IMMEDIATE 311

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SECTO 29

E.O. 11652: N/A

TAGS: PFOR, OCON, XM, MX

SUBJECT: AGENDA ITEM SIX - MULTINATIONAL CORPORATIONS

1. FONMIN CALVANI, VENEZUELA, SPOKE ON BEHALF OF LA'S.
HE REITERATED LA CONCERNS OVER THE GREAT SIZE, POWER, FINANCIAL
CAPACITY AND VIRTUAL SUPER-NATIONAL CHARACTER OF MANY INTERNATIONAL
ENTERPRISES (MNC'S). HE NOTED THAT MNC'S OPERATIONS OFTEN CONFLICT
WITH THE HOST COUNTRY'S SOVEREIGNTY OVER MANAGEMENT OF ITS RESOURCES
AND THEY OCCASIONALLY INTERFERE IN HOST COUNTRY INTERNAL
AFFAIRS. HE OBJECTED ALSO TO THE INVOLVEMENT OF U.S. DIPLOMATE,
CREATING AN EQUIVOCAL SITUATION WHERE THE DIPLOMAT IS BOTH
A USG REPRESENTATIVE AND REPRESENTATIVE OF THE MNC. HE SUGGESTED
THAT MNC'S IN THEIR OPERATIONS SHOULD EXHIBIT RESPECT FOR LOCAL
LAWS, AVOID INTERVENTION AND
ADAPT TO CULTURAL CONDITIONS OF THE HOST COUNTRY. THEY SHOULD
COOPERATE TO CLOSE RESOURCE GAP, FACILLITATE TRANSFER OF
TECHNOLOGY WITHOUT RESTRICTIONS AND TRAIN LOCAL WORKERS FOR SKILLED
AND MANAGERIAL POSITIONS.

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2. THE LA'S RECOMMENDED U.S. DEAL WITH THE MNC PROBLEM BY (A) AVOIDING SITUATIONS WHERE DIPLOMATS ACT AS SPOKESMEN FOR MNC'S, (B) COOPERATING IN ESTABLISHMENT OF A GLOBAL CODE OF CONDUCT FOR MNC'S (RATHER THAN A HEMISPHERIC APPROACH (AS HAK HAD SUGGESTED), (C) SUPPORTING PRINCIPLE OF NON-INTERFERENCE BY MNC'S IN HOST COUNTRY INTERNAL AFFAIRS, (D) MAKING A DISTINCTION BETWEEN PRIVATE FOREIGN INVESTMENT AND PUBLIC FINANCING, (E) RECOGNIZING THAT ALL TYPES OF FOREIGN INVESTMENT ARE NOT USEFUL, (F) RECOGNIZING THE NEED FOR HOST COUNTRY RULES REGULATING FOREIGN INVESTMENT, (G) AVOIDING INTERFERENCE IN CASES WHERE MNC'S HAVE BROKEN HOST COUNTRY LAWS OR INTERNATIONAL STANDARDS, (H) REFRAINING FROM USING MNC'S AS INSTRUMENTS OF NATIONAL POLICY AND FOR EXTRA-TERRITORIAL ENFORCEMENT OF U.S. LAWS, (I) COOPERATING ON MNC RESEARCH AND (J) COOPERATING WITH LA'S TO IMPLEMENT UNSC RESOLUTION 330 ON ACTIVITIES OF MNC'S.

3. SECRETARY RESPONDED IN GENERAL TERMS, REITERATING U.S. ACCEPTANCE OF RIGHT OF HOST COUNTRY TO PRESCRIBE RULES FOR MNC OPERATION, NEED FOR MNC'S TO OBEY LAWS AND RESPECT LAWS OF HOST COUNTRY AND TO AVOID INTERVENTION. MNC'S SHOULD ALSO CONTRIBUTE TO HOST COUNTRY DEVELOPMENT AND WELLBEING. HOWEVER, THEY ARE ENTITLED TO MINIMUM TREATMENT REQUIRED UNDER INTERNATIONAL LAW UNLESS THEY AGREE OTHERWISE, TO A REASONABLE RETURN ON THEIR INVESTMENTS AND TO EXPECT THERE WILL BE NO CHANGES IN THE RULES OF THE GAME OR ARBITRARY OR GROSSLY UNFAIR TREATMENT.

4. WITH REGARD TO SPOKESMEN AND LA'S RECOMMENDATION, SECRETARY DIFFERENTIATED BETWEEN U.S. DIPLOMATS ACTING IN COMMERCIAL NEGOTIATIONS AND IN SITUATIONS WHERE MNC'S WERE BEING TREATED ARBITRARILY OR EXTREMELY UNFAIRLY. HE EXPRESSED WILLINGNESS TO CONSIDER THE CODE OF CONDUCT IN THE GLOBAL CONTEXT AND COOPERATE IN STUDY OF MNC'S, AFFIRMED RECOGNITION OF RIGHT OF HOST COUNTRY TO LEGISLATE ON FOREIGN INVESTMENT AND MNC'S, ASSUMING NO MAJOR CHANGES IN RULES OF GAME, REITERATED NEED FOR MECHANISM TO LIMIT DISPUTES OF MNC'S, NOTED AGAIN USG STUDY OF EXTRA-TERRITORIAL APPLICATION U.S. LAW PROBLEM.

5. PERUVIAN FONMIN SPOKE BRIEFLY AGAINST MNC'S, CONCLUDING THEIR CONTRIBUTION WAS NEGATIVE RATHER THAN POSITIVE. SECRETARY RESPONDED BY POINTING OUT CONTRADICTION BETWEEN PERUVIAN CLAIM LIMITED OFFICIAL USE

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THAT MNC'S DON'T TRANSFER TECHNOLOGY AND CLAIM THAT BECAUSE OF CAPITAL INTENSIVE PROCESS THEY CONTRIBUTE TO UNEMPLOYMENT, AND SUGGESTED FURTHER STUDY NEEDED.

6. CALVANI RESPONDED TO U.S. FACT-FINDING PROPOSAL BY OBSERVING PROBLEM CAUSED BY EXISTENCE OF CALVO CLAUSE (THOUGH TERM NOT USED) WITH RESPECT TO REMOVAL OF DISPUTES FROM NATIONAL JURISDICTION AND SUGGESTED SERIOUS LEGAL PROBLEMS INVOLVED.

HOWEVER, HE ASKED FOR MORE INFORMATION ON U.S. PROPOSAL. THE SECRETARY RESPONDED BY EXPLAINING THAT WEHAD IN MIND FACT-FINDING PANEL COMPOSED OF RECOGNIZED EXPERTS WHICH ON REQUEST OF EITHER PARTY COULD DETERMINE FACTS IN DISPUTES, INTERPRET INTERNATIONAL LAW AND MAKE NONBINDING RECOMMENDATIONS TO PARTIES. ULTIMATE RESOLUTION OF ALL PROBLEMS WOULD STILL REMAIN WITHIN LIMITS OF NATIONAL JURISDICTION. ONCE CONCILLATION UNDERWAY, ALL PARTIES WOULD REFRAIN FROM ACTS WHICH WOULD COMPLICATE SITUATION AND USG WOULD SPECIFICALLY REFRAIN FROM APPLICATION OF LEGISLATION RESPECTING FOREIGN ASSISTANCE. HE CLOSED BY OBSERVING THAT FACT-FINDING PANEL WOULD ALLOW DETERMINATION OF SUCH QUESTIONS AS "WHAT IS EXCESS PROFIT?" AND "HOW SHOULD COMPENSATION BE COMPUTED?" KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MEETING AGENDA, PERSONNEL CONDUCT, PERSONNEL TRAINING, SECTO 29, FOREIGN MINISTERS MEETINGS, NEGOTIATIONS, FOREIGN INVESTMENTS, DIPLOMATIC PROTOCOL
Control Number: n/a
Copy: SINGLE
Draft Date: 23 FEB 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974MEXICO01640
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: MEXICO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740213/aaaaamgb.tel
Line Count: 128
Locator: TEXT ON-LINE
Office: ACTION ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MorefiRH
Review Comment: n/a
Review Content Flags:
Review Date: 17 SEP 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <17 SEP 2002 by boyleja>; APPROVED <18-Sep-2002 by MorefiRH>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: AGENDA ITEM SIX - MULTINATIONAL CORPORATIONS
TAGS: PFOR, OCON, XM, MX
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005